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FILED
OCT 11 1983
ALEXANDER L. STEVAS,
CLERK

83-428

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1983

No.

DANNY BARWICK, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT.

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QUESTION PRESENTED

Did the trial judge properly refuse to dismiss the indictment against Petitioner when the solicitor's statement that he and certain officers "believe in this case" did not constitute such aggravated and prejudicial misconduct as to warrant such a drastic remedy, and when any error was cured by the trial judge's instruction that the jury disregard the comment?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Opinion No. 21932, filed May 26, 1983, as reproduced in Petitioner's Appendix A at pages 1A-5A.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

Did the trial judge properly refuse to dismiss the indictment against Petitioner when the solicitor's statement that he and certain officers "believe in this case" did not constitute such aggravated and prejudicial misconduct as to warrant such a drastic remedy, and when any error was cured by the trial judge's instruction that the jury disregard the comment?

ARGUMENT

The trial judge properly refused to dismiss the indictment against Petitioner because the solicitor's statement that he and certain officers "believe in this case" did not constitute such aggravated and prejudicial misconduct as to warrant

such a drastic remedy, and because any error was cured by the trial judge's instruction that the jury disregard the comment.

Petitioner asks this Court to rule that a solicitor should not explicitly inject his personal opinion into the jury's deliberations. (Petition, p. 9). That rule, however, is already the law in South Carolina. State v. Koon, ___ S.C. ___, 298 S.E.2d 769 (1982); State v. Butler, 277 S.C. 543, 290 S.E.2d 420 (1982); State v. Woomer, 277 S.C. 170, 284 S.E.2d 357 (1981). Because the South Carolina Supreme Court agrees with Petitioner's position on this point, there is nothing for this Court to decide.

The South Carolina Supreme Court affirmed Petitioner's conviction, not because the solicitor's comment (that

he and certain law enforcement officers "believe in this case") was proper, but because Petitioner asked for an inappropriate remedy -- dismissal of the indictment. In its opinion in this case, the South Carolina Supreme Court stated that dismissal of a criminal charge is a drastic remedy. The court properly held that this case did not involve such extremely aggravated misconduct or serious, permanent prejudice as would warrant dismissal of the indictment.

Furthermore, the trial judge sustained Petitioner's objection. Contrary to Petitioner's assertion in his Petition (p. 10), the judge immediately instructed the jury to disregard the comment. (Petition, Appendix B). The solicitor's statement, in view of the judge's curative

instruction, did not deprive Petitioner of a fair trial. State v. Durden, 264 S.C. 86, 212 S.E.2d 587 (1975).

Petitioner's argument for a Writ of Certiorari is without merit.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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